

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
Tampa Division**

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 8:03-CR-77-T-30-TBM
	)	The Honorable James S. Moody, Jr.
SAMI AMIN AL-ARIAN, et al.	)	
	)	
Defendants.	)	

**RENEWED MOTION FOR JUDGMENT OF ACQUITTAL  
AND MEMORANDUM OF LAW IN SUPPORT**

**COMES NOW** the Accused and renews all of previous arguments he or his co-defendants raised pursuant to the Rule 29 Motions at the end of the government's case and at the close of all of the evidence. The instant motion raises additional arguments for the Court's consideration. Dr. Al-Arian respectfully requests this Court enter a judgment of acquittal on the remaining counts against him. Dr. Al-Arian respectfully requests oral argument on this motion pursuant to Local Rule 3.01(d). In addition the Accused now raises the following issues as Rule 29 Motions to Dismiss.

**Introduction**

On December 6, 2005, the jury, after a lengthy trial, acquitted Dr. Al-Arian of Count 2 (conspiracy to murder or maim persons abroad), Counts 8 and 17 (two of the four travel act counts), Counts 27, 28, and 29 (all of the substantive material support counts), and Counts 46 and 53 (both of the obstruction of justice counts). The jury did not reach a verdict as to Count 1 (RICO conspiracy), Count 3 (material support conspiracy), Count 4 (IEEPA conspiracy), Count 7 and 9 (travel acts), Counts 38 through 40 (money laundering), and Count 44 (unlawful attempt

to procure citizenship). The Court declared a mistrial on those counts. (Doc. 1464). See table below:

### Al-Arian Counts & Verdicts

<b>Count</b>	<b>Verdict</b>	<b>18 U.S.C §</b>	<b>Charge</b>	<b>Overt Acts from Count 1</b>
1.	Mistried	1962(d)	Conspiracy to Commit Racketeering	1-324
2.	NG	956(a)(1)	Conspiracy to Murder, Maim, or Injure Persons at Places Outside the United States	236-324
3.	Mistried	2339B	Conspiracy to Provide Material Support	242-324
4.	Mistried	371	Conspiracy to Make and Receive Contributions of Funds, Goods, or Services to or for the Benefit of Specially Designated Terrorists	139-324
7.	Mistried	1952(a)(2) 1952(a)(3) 2	Travel in Interstate or Foreign Commerce or Use of Mail or Any Facility in Interstate or Foreign Commerce	263
8.	NG	1952(a)(2) 1952(a)(3) 2	Travel in Interstate or Foreign Commerce or Use of Mail or Any Facility in Interstate or Foreign Commerce	264
9.	Mistried	1952(a)(2) 1952(a)(3) 2	Travel in Interstate or Foreign Commerce or Use of Mail or Any Facility in Interstate or Foreign Commerce	265
17.	NG	1952(a)(2) 1952(a)(3) 2	Travel in Interstate or Foreign Commerce or Use of Mail or Any Facility in Interstate or Foreign Commerce	300

27.	NG	2339B(a)(1) 2339B(a)(2)	Providing Material Support to a Foreign Terrorist Organization	none cited
28.	NG	2339B(a)(1) 2339B(a)(2)	Providing Material Support to a Foreign Terrorist Organization	none cited
29.	NG	2339B(a)(1) 2339B(a)(2)	Providing Material Support to a Foreign Terrorist Organization	none cited
38.	Mistried	1956(a)(2)9A) [also 50 U.S.C. 1701- 1706]	Money Laundering	none cited
39.	Mistried	1956(a)(2)9A) [also 50 U.S.C. 1701- 1706]	Money Laundering	none cited
40.	Mistried	1956(a)(2)9A) [also 50 U.S.C. 1701- 1706]	Money Laundering	none cited
44.	Mistried	1425(a) [also 1015(a)]	Attempt to Procure Citizenship or Naturalization Unlawfully	none cited
46.	NG	1505 2	Obstruction of Justice	none cited
53.	NG	1503 2	Obstruction of Justice	none cited

## **Count 1**

In the instant case the government charged as Count I a RICO Conspiracy. RICO enterprise consisted of:

### **B. The Enterprise**

24. At all times material to this Superseding Indictment, the above defendants and others known and unknown were members and associates of the PIJ, a criminal organization whose members and associates engaged in acts of violence including murder, extortion, money laundering, fraud and misuse of visas, and operated worldwide including in the Middle District of Florida.

25. The Palestinian Islamic Jihad-Shiqaqi Faction (PIJ), including the ICP, MWS, WISE, IAF, Elehssan, AMCN and others known and unknown, constituted an "enterprise" (hereinafter referred to as the "PIJ Enterprise"), as defined by Title 18, United States Code, Section 1961(4); that is, a group of individuals and entities associated in fact which engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objects of the enterprise.

### **C. The Racketeering Conspiracy Violation**

26. From in or about 1984, the exact date being unknown to the grand jury, and continuing until in or about the date of this Superseding Indictment, in the Middle District of Florida and elsewhere,

SAMI AMIN AL-ARIAN, a/k/a "Amin",  
a/k/a/ "The Secretary",  
a/k/a "Abu Abdullah"

and others, known and unknown, being persons employed by and associated with the enterprise described in Section B of this Count; that is, the PIJ Enterprise, which enterprise engaged in, and its activities affected, interstate and foreign commerce, knowingly, willfully and unlawfully did combine, conspire, confederate, and agree together and with each other and with other persons, both known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1962(c); that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise, through a pattern of racketeering activity, as defined in the Title 18, United States Code, Section 1961(1) and (5), consisting of:

[a] multiple acts involving murder, in violation of Florida Statutes 782.04; 777.04(3);

- [b] multiple acts involving extortion in violation of Florida Statutes 836.05, 777.011 and 777.04;
- [c] acts indictable under Title 18, United States Code, Section 1956(a)(2) and (h) [money laundering];
- [d] acts indictable under Title 18, United States Code, Section 1952 [interstate or foreign travel or transportation and use of any facilities in interstate or foreign commerce with the intent to promote and carry on an unlawful activity];
- [e] acts indictable under Title 18, United States Code, Section 956 [conspiracy to kill, kidnap, maim or injure persons in a foreign country];
- [f] acts indictable under Title 18, United States Code, Section 2339B [providing material support or resources to designated Foreign Terrorist Organizations];
- [g] acts indictable under Title 18, United States Code, Section 1546 [fraud and misuse of visas, permits and other documents; and
- [h] acts indictable under Title 18, United States Code, Section 1503 [obstruction of justice].<sup>1</sup>

27. It was further part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of the enterprise.

#### **D. Means and Methods of the Conspiracy**

28. The enterprise members would and did secretly establish cells or sections of the PIJ in different countries, and in the United States utilized the structure, facilities and academic environment of USF to conceal the activities of the PIJ.

29. The enterprise members would and did, by verbal and written communications, maliciously threaten injury to persons, namely, the inhabitants of the State of Israel and individuals and entities owning land in the State of Israel, with the intent thereby to obtain from such persons, certain property, namely, the physical land located within the State of Israel; such verbal and written communications would and did include, but were not limited to, the following statements described in substance below....

It is of particular note in this case that Count (1) charges a RICO-conspiracy. Like all conspiracies RICO-conspiracy is an inchoate crime. Thus the very essence of a RICO-

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<sup>1</sup> It is important to note that Dr. Al-Arian was acquitted of both obstruction of justice charges as alleged in Counts 46 and 53.

conspiracy is the Accused state of mind. The appropriate inquiry with respect to a RICO-conspiracy, like all conspiracy, is what is the Agreement and whether the Accused joined the Agreement. In this case a state of mind which would indicate that an Accused was engaged and involved in a conspiracy to murder or main was essential to any conviction of an Accused on the Count 1 conspiracy.

The Government's theory of the case was simple. The purpose of the RICO was to remove the Israeli people from the State of Israel. This was to be accomplished by a series of acts, which included murder, maiming, threats and obstruction of justice. The Indictment itself is replete with discussions about acts of murder and mayhem. The Government's proof included an additional series of acts involving murder and mayhem. Suffice it to say that guilt of a state of mind sufficient to convict Dr. Al-Arian of conspiracy to commit murder or mayhem was essential to his involvement in a violent RICO-conspiracy. That state of mind was to be supplied by Count II of the Indictment, which was inextricably married to Count I.

## **COUNT TWO**

### **(Conspiracy to Murder, Maim, or Injure Persons at Places Outside the United States)**

#### **A. Introduction**

1. Part A of Count One of the Superseding Indictment is incorporated by reference and re-alleged herein.
2. Title 18, United States Code, Section 1111(a) defines the terms "murder" as it applies to acts committed within the special maritime and territorial jurisdiction of the United States, as follows:  
  
Murder is the unlawful killing of a human being with malice aforethought.
3. Title 18, United States Code, Section 114 defines the term "maiming" as follows:

Whoever within the special maritime and territorial jurisdiction of the United States, and with intent to ... maim, or disfigure, cuts, bites, or slits the nose, ear, or lip, or cuts out or disables the tongue, or puts out or destroys an eye, or cuts off or disables a limb or any member of another person, [shall be guilty of an offense.]

#### **B. Agreement**

4. From in or about April, 1996, the exact date being unknown to the Grand Jury, and continuing until the date of this Superseding Indictment, in the Middle District of Florida and elsewhere, the defendants,

SAMI AMIN AL-ARIAN,  
a/k/a "Amin,"  
a/k/a "The Secretary,"  
a/k/a "Abu Abdullah,"

knowingly, unlawfully, and willfully, combined, conspired, confederated and agreed together and with each other and with other persons, who are known and unknown to the Grand Jury, to commit, at places outside the United States, acts that would constitute the offense of murder or maiming if committed in the special maritime and territorial jurisdiction of the United States.

#### **C. Means and Methods of the Conspiracy**

5. It was a part and an objective of said conspiracy that the defendants and others known and unknown, would and did perform the acts listed in Part D of the Superseding Indictment, Count One, Means and Methods, which are hereby incorporated by reference.

#### **D. Overt Acts**

6. Within the jurisdiction of the United States, in furtherance of said conspiracy, and to effect the objects thereof, the defendants and others, known and unknown to the Grand Jury, committed the Overt Acts set forth in Part E of Count One, paragraphs 236 through 324 of this Superseding Indictment, which are fully incorporated by reference herein.

All in violation of Title 18, United States Code, Section 956(a)(1)

As a result of a choice made by the Government, the jury had before it whether the Accused here had joined an Agreement, the object of which was to commit murder or mayhem overseas. The jury acquitted the Accused on that charge, affirmatively rejecting the Government's contention regarding the Accused's state of mind, thereby also rejecting that the Accused had the state of mind necessarily required to be a member of the Count I conspiracy.

In order to retry Dr. Al-Arian on Count I of the current Indictment the charge would have to be materially altered as a result of his acquittal of Count II. The holding in "*Stirone v. U.S.*, 361 US 212"<sup>2</sup> would prevent such alteration or revision.

As a result of the jury's verdict, Dr. Al-Arian can never be tried on charges where an essential element of those charges is a conspiracy to commit murder and mayhem. In Count I, the Government through the use of the device of RICO-conspiracy, fashioned an overarching conspiracy. They joined together a number of conspiracies, all having separate and distinct agreements, into a conspiracy that in order to convict, the Government had to show that the Accused shared an intent to ascribe to the overreaching agreement. As a result of Dr. Al-Arian's acquittal on the Count II agreement, whatever remains of Count I it certainly is not what was contemplated by the Grand Jury when returning the current Indictment.

As postured by the government essential to the Count I Indictment as charged in its "opening", "proof" and "closing" was murder and the conspiracy to commit murder abroad. The government acknowledged throughout the case that Dr. Al-Arian had no role in the planning of or participation in any violent acts anywhere. Thus, the only connection now to the violence specified in Count I of the Indictment would have to be embodied in the conspiracy to commit

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<sup>2</sup> It has been the rule that after an Indictment has been returned its charges may be no broadened through amendment except by the Grand Jury itself. *Stirone*. Here the United States cannot rely on a doctrine of amendment by acquittal to avoid re-indictment of the Accused. Additionally, there are double jeopardy implications that result from the Accused acquittal on Count II and a re-trial on Count I which may or may not be relevant to the Court's disposition here. See *Ashe v. Swanson*, 317 U.S. 436. However, it is not the Accused's intention to waive by the filing of this motion any double jeopardy consideration. See also, *Kotteakos v. United States*, 66 S. Ct. 1239 where the government charged one conspiracy but proved another. It is also likely that any effort to prove the Count I conspiracy charge in the current Indictment would involve a change in the government's factual theory of the case. This would inevitably involve a due process violation. See *Stumph v. Mitchell*, 367 F.3d 594.



murder abroad. The sticking point in these proceedings at this phase is that Dr. Al-Arian has been acquitted of the state of mind that gives rise to all the violence in Count II.

One need only look at the indictment for a short period of time to understand that the whole purpose of Count I was an effort to connect the activities of Dr. Al-Arian here in the United States, which were entirely non-violent, with the activities of the PIJ in the Occupied Territories and Israel. The government's theory was one of mere association and on this score they failed to impress the jury. The acquittal in Count II which was married to Count I illustrates this. Count II gave life to the *mens rea* of violence that the government sought to establish in Count I. Without Count II, the government failed to prove that Dr. Al-Arian had the required *mens rea* to support convictions of Count I.<sup>3</sup>

Regarding Count I the evidence and the Jury's verdict establish beyond peradventure that the government's proof failed and Count I should be dismissed.

### **Count 3: Conspiracy to Provide Material Support**

Defendant Sami Al-Arian adopts by reference all arguments regarding this count as filed in the Renewed Motion for Judgment of Acquittal and Memorandum of Law in Support by Co-Defendant Hatem Naji Fariz.

### **Count 4: IEEPA Conspiracy**

Count Four alleges that, from January 25, 1995 to the date of the Superseding Indictment, Dr. Al-Arian violated 18 U.S.C. § 371 by conspiring to make or receive contributions of funds, goods, or services to or for the benefit of the PIJ, Ramadan Shallah, Abd Al-Aziz Awda, and

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<sup>3</sup> It is also of moment that the RICO-conspiracy was also comprised according to the Indictment of acts indictable for providing material support or resources to designated terrorist organizations and act indictable under Title 18 Section 1503. On each of the substantive acts involving these charges the jury found the Accused Not Guilty – See table.

Fathi Shiqaqi, Specially Designated Terrorists (“SDT”), in violation of Executive Order 12947, 50 U.S.C. § 1705, and 31 C.F.R. § 595.

With respect to the issue of providing funds to the PIJ, Dr. Al-Arian incorporates by reference the arguments made above in support of his motion for a judgment of acquittal on Count Three. The jury found Dr. Al-Arian not guilty of Counts 27, 28, and 29, which charged him with providing funds to the PIJ with the specific intent to further its unlawful activities. Similarly, Dr. Al-Arian contends that the government failed to prove that he conspired to contribute funds to or for the benefit of the PIJ, Shallah, Shiqaqi, or Awda with the specific intent of furthering unlawful activities.

Finally, with respect to Fathi Shiqaqi, who was killed in late October 1995, the government did not present any evidence that Dr. Al-Arian had any contact with him after July, 1994, well before any designation. The government further did not provide any evidence that Dr. Al-Arian conspired to make or receive any contributions of funds, goods, or services to or for the benefit of Shiqaqi with the specific intent to further the unlawful activities of Shiqaqi.

In short, there is no evidence that Dr. Al-Arian conspired to make or receive any contributions of funds, goods, or services to or for the benefit of an SDT with the requisite specific intent to further the unlawful activities of the PIJ. Accordingly, Dr. Al-Arian respectfully requests that this Court enter a judgment of acquittal on Count Four.

### **Travel Acts, Counts 7 & 9**

In order to convict Dr. Al-Arian of the two travel acts alleged in counts 7 and 9, the government would have to prove beyond a reasonable doubt the following:

That Dr. Al-Arian used such facility (herein the telephone) with the intent to:

- (a) commit any crime of violence to further any unlawful activity, that is extortion and money laundering ....and
- (b) otherwise promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity, namely, extortion and money laundering; and thereafter did promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity. And,

© That the Defendant thereafter knowingly and willfully performed an act...to commit a crime of violence to further such unlawful activity...

In violation of Title 18, United States Code, sections 1952 (a)(2) and (3), and Title 18, United States Code, Section 2.

Since the jury acquitted Dr. Al-Arian of conspiracy to commit murder and maim persons outside the United States, as alleged in Count 2, the travel acts must also fail because they necessarily implicate a criminal intent to commit the “crime of violence” to further the unlawful activities of extortion and money laundering. There is simply no evidence that Dr. Al-Arian engaged in either the July 20, 2000 or August 8, 2000 telephone conversations with the intent to commit a crime of violence to further extortion or money laundering, or that he thereafter performed or attempted to perform an act to commit a crime of violence to further such unlawful activity.

These conversations took place during the deportation proceedings of Mazen Al Najjar involving the transfer of monies involving his relatives, ostensibly for attorney’s fees. There is simply no evidence that violence, extortion or money laundering was implicated in these phone calls or in the theoretical movement of these funds. Accordingly, Dr. Al-Arian respectfully requests that this Court enter a judgment of acquittal on Counts 7 and 9.

**Conclusion**

Based on the foregoing, Dr. Al-Arian respectfully requests that this Court enter a judgment of acquittal on Counts 1, 3, 4, 7, 9, 38, 39, 40, and 44.

Dated: December 19, 2005

Respectfully submitted,

\_\_\_/s/Linda Moreno\_\_\_

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19<sup>th</sup> day of December, 2005, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz.

/s/ Linda Moreno  
Linda Moreno  
Attorney for Sami Al-Arian

